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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,113	09/26/2001	Peter Yau Tak Lin	8258X	3953

27752 7590 11-01/2004  
THE PROCTER & GAMBLE COMPANY  
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EXAMINER

TRAN LIEN, THUY

ART UNIT PAPER NUMBER

1761

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/965,113

Applicant(s)

LIN ET AL.

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 38-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12, 38 and 40 is/are rejected.
- 7) ☒ Claim(s) 11, 39 and 41 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Claims 1-10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Seiden et al.

Seiden et al disclose a emulsifier system comprising fatty acid monodiglycerides, 0-60% fatty acid esters of polyols and fatty acid mono-glyceride esters of polycarboxylic acids. The polyols are polyglycerols. The fatty acid esters of polyols have an average of from 4-14 hydroxyl groups wherein from about 10-66% of the hydroxyl groups are esterified and at least about 65% of the fatty acids are selected from the group consisting of C14-C20 saturated fatty acids. Polyol fatty acid ester made from palmitic and stearic acids are preferred for use. The polyglycerol esters must have an average of from about 2-12 glycerol units. The percentage of hydroxyl groups esterified with fatty acid is from about 10-66%. The polyglycerol esters contain less than 15% free polyglycerol. The emulsifier system also contain lecithin. (see col. 4 lines 26-68, col. 5 lines 1-16, and 49-50)

The reference disclose the limitations of the above claims. For claims 2-3, Seiden et al disclose 2 to about 12 glycerol units; they do not disclose the percentage which indicates the PGE have a polyglycerol backbone of 2-12 and the claimed "at least about 80%" includes all. For claim 4, Seiden et al disclose from about 10-66% of the hydroxyl are esterified; the claimed range falls within this range. For claims 5-6, 8, Seiden et al et al disclose the emulsifier system wherein at least 65% of the ester groups are derived from saturated fatty acid (page 12 line 7-8); at least 65 includes 65 and above which falls in the claimed range. Seiden et al disclose the preferred fatty acids are palmitic and stearic acids; these are the fatty acids in claim 8. For claim 7,

Seiden et al disclose the polyglycerol esters contain less than 15% free polyglycerol. For claims 9,10 and 12, Seiden et al disclose the emulsifier system comprises monoglyceride and lecithin.

Claims 1 and 38, 40 are rejected under 35 U.S.C. 102(e) as being anticipated by Gruning et al.

Gruning et al disclose emulsifier comprising polyglycerol partial esters fatty acids. The esters are obtained by esterification of a polyglycerol mixture with fatty acids having 12-22 carbons; the degree of esterification is between 30-75%. Suitable polyglycerols have the following oligomer distribution: glycerol 0-30% by weight, diglycerol 15-40% by weight, triglycerol 10-55% by weight, tetraglycerol 2-25% by weight and pentaglycerol and higher components 0-15% by weight. ( see col. 2 lines 13-23, col. 3 lines 25-30)

The reference discloses the limitations of the above claims. Claim 1 recites about 99% polyglycerol ester; about 99% is not exactly 99% and includes 100% polyglycerol ester which is the emulsifier disclosed by Gruning et al.

Claims 11, 39 and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. There is no suggestion to modify the prior art to obtain the limitations cited in these claims.

The new rejections are necessitated by amendment.

Applicant's arguments with respect to claims 1-12 and 38-41 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wednesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 29, 2004

  
LIEN TRAN  
PRIMARY EXAMINER  
